

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

ARBUTUS BIOPHARMA CORPORATION)
and GENEVANT SCIENCES GMBH,)
Plaintiffs,)
v.) C.A. No. 22-252 (MSG)
MODERNA, INC. and MODERNATX, INC.) **JURY TRIAL DEMANDED**
Defendants.)

**DEFENDANTS' PARTIAL MOTION TO DISMISS
PURSUANT TO FEDERAL RULE OF CIVIL PROCEDURE 12(B)(6)**

Pursuant to Federal Rule of Civil Procedure 12(b)(6) and 28 U.S.C. § 1498(a), Defendants Moderna, Inc. and ModernaTX, Inc. (collectively, “Moderna”) respectfully move to dismiss, with prejudice, the claims of Plaintiffs Arbutus Biopharma Corporation’s and Genevant Sciences GmbH’s Complaint relating to Moderna’s sale and provision of COVID-19 Vaccine doses to the U.S. Government. The grounds for this motion are set forth more fully in Moderna’s opening brief, submitted herewith.

OF COUNSEL:

James F. Hurst
KIRKLAND & ELLIS LLP
300 North LaSalle
Chicago, IL 60654
(312) 862-2000

Patricia A. Carson, Ph.D.
Jeanna M. Wacker, P.C.
Mark C. McLennan
KIRKLAND & ELLIS LLP
601 Lexington Avenue
New York, NY 10022
(212) 446-4800

MORRIS, NICHOLS, ARSHT & TUNNELL LLP

/s/ Brian P. Egan

Jack B. Blumenfeld (#1014)
Brian P. Egan (#6227)
1201 North Market Street
P.O. Box 1347
Wilmington, DE 19899
(302) 658-9200
jblumenfeld@morrisnichols.com
began@morrisnichols.com

Attorneys for Defendants

May 6, 2022

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

AR BUTUS BIOPHARMA CORPORATION)
and GENEVANT SCIENCES GMBH,)
Plaintiffs,)
v.) C.A. No. 22-252 (MSG)
MODERNA, INC. and MODERNATX, INC.)
Defendants.)

[PROPOSED] ORDER

At Wilmington this _____ day of _____, 2022:

IT IS HEREBY ORDERED that Defendants Moderna, Inc.’s and ModernaTX, Inc.’s Partial Motion to Dismiss Pursuant to Federal Rule of Civil Procedure 12(b)(6) is **GRANTED** and Plaintiffs’ claims relating to Moderna’s sale and provision of COVID-19 Vaccine doses to the U.S. Government are **DISMISSED** with prejudice.

The Honorable Mitchell S. Goldberg
United States District Judge

CERTIFICATE OF SERVICE

I hereby certify that on May 6, 2022, I caused the foregoing to be electronically filed with the Clerk of the Court using CM/ECF, which will send notification of such filing to all registered participants.

I further certify that I caused copies of the foregoing document to be served on May 6, 2022, upon the following in the manner indicated:

John W. Shaw, Esquire
Karen E. Keller, Esquire
SHAW KELLER LLP
I.M. Pei Building
1105 North Market Street, 12th Floor
Wilmington, DE 19801
Attorneys for Plaintiffs Arbutus Biopharma Corporation and Genevant Sciences GmbH

VIA ELECTRONIC MAIL

Daralyn J. Durie, Esquire
Eric C. Wiener, Esquire
DURIE TANGRI LLP
217 Leidesdorff Street
San Francisco, CA 94111
Attorneys for Plaintiff Arbutus Biopharma Corporation

VIA ELECTRONIC MAIL

Kira A. Davis, Esquire
DURIE TANGRI LLP
953 East 3rd Street
Los Angeles, CA 90013
Attorneys for Plaintiff Genevant Sciences GmbH

VIA ELECTRONIC MAIL

David I. Berl, Esquire
Adam D. Harber, Esquire
Thomas S. Fletcher, Esquire
Jessica Palmer Ryen, Esquire
Denis R. Hurley, Esquire
Lydia B. Cash, Esquire
WILLIAMS & CONNOLLY LLP
680 Maine Avenue S.W.
Washington, DC 20024
*Attorneys for Plaintiff Genevant Sciences
GmbH*

VIA ELECTRONIC MAIL

/s/ Brian P. Egan

Brian P. Egan (#6227)